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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:EO
PLR-151993-12

Date:
May 22, 2013

Entity:

State:

Statute 1:

Statute 2:

Statute 3:

Statute 4:

Year:

Date:

a:

b:

Dear _____ :

This letter responds to a letter from your authorized representative dated November 26, 2012, as well as subsequent correspondence, submitted on behalf of

Entity, requesting a ruling that the Entity's income will be excluded from gross income under § 115 of the Internal Revenue Code. The Entity represents the facts as follows.

FACTS

The Entity, a State nonprofit corporation, is recognized by the IRS as an organization described in § 501(c)(3) of the Code. It was established in Year by state statute, as codified (Statute 1), to administer a guaranteed student loan program for State students and to provide various services related to college financing and attendance. Due to changes in such programs on the national level, primarily through Statute 2, the Entity no longer reviews loan applications for eligibility or guarantees any new loans. The Entity represents that it does not contract with the U.S. Department of Education to service federal direct student loans under Statute 2.

Despite the changes in student loan programs instituted by the federal government, many of the Entity's activities remain the same, such as administering loan repayments with respect to its loan portfolio (including the rehabilitation of loans in default), performing default aversion services, and conducting research and public education relating to college attendance and financing. In establishing the Entity, Statute 1 refers to the strong interest of the state in facilitating and encouraging postsecondary education for qualified students and cited higher education as an important means to promoting the welfare and security of the state.

Though established by State to pursue what Statute 1 characterizes as an important public purpose, the Entity is operated under state nonprofit corporation law (Statute 3) as an entity separate from the state. As a public nonprofit, the Entity has all the powers and duties of a State nonprofit corporation, except as provided in Statute 1 (for example, the Entity is not subject to voluntary or involuntary dissolution, and it may not be placed in receivership). Statute 1 provides that all expenses of the Entity must be paid from the Entity's income and that none of the liabilities created by the Entity are to be debts of the state.

At the same time, because of its special function, the Entity is limited by Statute 1 to activities, both required and permitted, the state deems necessary and desirable to accomplishing its mission. In addition, Statute 1 subjects the Entity to substantial state oversight, including the review of its annual reports and audited financial statements.

The Entity's governing board is composed of a directors, each serving a term of b years. The governor of State, with the advice and consent of the senate, appoints the members of the board of directors and designates the chairman from among that membership. The Entity's board elects the other officers from among its members. The governor may remove the directors with or without cause.

The Entity may be terminated at any time by the state legislature. Absent legislative action, the Entity will terminate on Date under the state's sunset law (Statute 4). Upon termination, the _____, an elected state official, will serve as trustee to administer the Entity's assets and to satisfy all outstanding obligations. At a date certain after termination, as provided by Statute 4, all remaining funds will be transferred to the state's general revenue fund.

LAW AND ANALYSIS

Section 115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential government function and accruing to a state or any political subdivision thereof.

In Rev. Rul. 77-261, 1977-2 C.B. 45, income from an investment fund, established under a written declaration of trust by a state, for the temporary investment of cash balances of the state and its participating political subdivisions, was excludable from gross income for federal income tax purposes under § 115(1). The ruling indicated that the statutory exclusion was intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of a corporation or other entity engaged in the operation of a public utility or the performance of some governmental function that accrued to either a state or municipality. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and which are within the ambit of a sovereign properly to conduct.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the income of an organization formed, funded, and operated by political subdivisions to pool various risks arising from their obligations regarding public liability, workers' compensation, or employees' health is excludable from gross income under § 115. In this ruling, private interests did not materially participate in the organization, nor did they benefit more than incidentally from the organization.

The Entity, by administering student loan payments and providing other education-related services, performs a function that State has explicitly deemed to be necessary and desirable to achieving an important public purpose: encouraging and facilitating higher education for eligible students. Such activities constitute the performance of an essential governmental function. See Rev. Rul. 90-74 and Rev. Rul. 77-261.

All of the Entity's income accrues to State. No private interests materially participate in, or benefit more than incidentally from, the operation of the Entity other than as providers of goods or services. The benefit to student borrowers is incidental to the public benefit. Upon the Entity's termination, either by the legislature or pursuant to

the sunset law, the state will assume control of Entity assets. No assets remaining after satisfaction of liabilities will be distributed to any entity other than a state, a subdivision of a state, or an entity the income of which is excluded from gross income under § 115. See Rev. Rul. 90-74.

RULING

Based solely on the facts and representations submitted by the Entity, we conclude that the Entity's income is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof for purposes of § 115(1). Consequently, we rule that the Entity's income is excludable from gross income under § 115(1).

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code.

Under a power of attorney on file with this office, we are sending copies of this letter to your authorized representatives.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

SYLVIA HUNT
Assistant Chief
Exempt Organizations Branch
Office of Division Counsel /
Associate Chief Counsel
(Tax Exempt & Government Entities)

enclosures: copy for § 6110 purposes

cc: